IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2007

CORAM

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE D.MURUGESAN

O.S.A.No.5 of 2007
and
Contempt Petition No.72 of 2007
and
Crl.O.P.No.28816 of 2006

O.S.A.No.5 of 2007:

G.V.Lakshminarayanan .. Appellant(Plaintiff)
S/O. G.M.Venkatesalu Naidu
New No.26 old No.39 I Floor,
Diwan Rama Road,
Purasawalkam, Chennai - 84

-Vs-

1. G.V.Nagammal
   (A mentally retarded person
    in the custody of M.E.Devarajan)

2. M.E.Devarajan
3. M.D.Kasthuri
4. M.D.Gajarajkumar
5. M.D.Balaji
6. G.N.Varalakshmi
7. G.V.Narasimhan .. Respondents(Defendants 1 to 7)

All residing at :
New No.26 Old No.39,
Ground Floor,
Diwan Rama Road,
Purasawalkam, Chennai - 84

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Memorandum of Grounds of Original Side Appeal under Order XXXVI Rule 9 of Original Side Rules read with Clause 15 of the Letters Patent against the order dated 11.10.2006 made in O.A.No.147 of 2006 in C.S.No.121 of 2006.

For Appellant :: Mr.R.Parthasarathy

For Respondents :: Mr.T.V.Ramanujam
Senior Counsel for
Mr.T.V.Krishnamachari
for R2 to R5

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Cont.P.No.72 of 2007:

1. M.D.Kasthuri
2. M.E.Devarajan .. Petitioners

-Vs-

1. G.V.Lakshminarayanan
2. D.Kanagaraj .. Respondents

Petition filed under Section 2(C) of the Contempt of Courts Act, 1971 to take appropriate proceedings against the respondents for disobeying the order dated 11.10.2006 made in O.A.No.147 of 2006 in C.S.No.121 of 2006.

For Petitioners :: Mr.T.V.Ramanujam
Senior Counsel for
Mr.T.V.Krishnamachari

For Respondents :: Mr.R.Parthasarathy for R1

JUDGMENT

(Judgment of the Court was delivered by D.MURUGESAN, J.)

The plaintiff in C.S.No.121 of 2006 is the appellant in O.S.A.No.5 of 2007. The suit has been laid for a declaration to declare that the first defendant, who is the first respondent in the appeal, is mentally retarded and incapable of taking care of her personal and proprietary interest and consequently to appoint the plaintiff as the lawful and legal guardian of the person and properties of the first defendant and also for other reliefs. Pending suit, O.A.No.147 of 2006 was filed by the appellant to grant an order of interim direction directing a panel of doctors from the Government Mental Hospital, Kilpauk or any other panel of doctors as deemed fit by this Court to examine the first defendant/first respondent and submit a report before this Court about the state of her mental health. The learned single Judge dismissed the interlocutory application on the ground that the appellant has to prove the case on his own on the basis of documents and materials in the trial and, considering the age of the first respondent, it is not proper and appropriate to subject her for medical examination to find out whether she is mentally retarded person or not. Questioning the said order, the present appeal has been filed by the appellant.

2. The further few facts giving rise to the filing of the appeal are as follows:-

The appellant is the son of the first respondent. The third respondent is his sister and the second respondent is the brother of the first respondent. The third respondent is also the wife of the second respondent and the fourth and fifth respondents are their sons. The sixth respondent is the daughter of the second and third respondents, who was given in marriage to the seventh respondent, the brother of the appellant. Thus all the parties are very closely related to each other.

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3. According to the appellant, his father and the father of the second respondent constituted a joint Hindu Family and all the parties along with their close relatives lived in a common family house and the arrangement continued even after the death of the appellant's father and also the death of the second respondent's father. The business was also jointly managed as a family business.

4. It is the case of the appellant that his mother, the first respondent, has been suffering from mental retardation ever since the time of her birth and she is incapable of taking care of her personal or proprietary interest. In Feb'2003, the appellant went to USA for taking treatment for his slip disc and returned to India in May'2004. Taking advantage of his absence and his poor health, the respondents 2, 4, 5 and 7 colluded themselves in a manner prejudicial to the appellant's interest and hatched a conspiracy to exclude the appellant from the joint family business as well as the joint family house. This led to lodging of police complaints by the parties against each other.

5. The appellant filed O.S.No.6703 of 2004 before the XIII Asst. Judge, City Civil Court, for a permanent injunction restraining the respondents from interfering with his peaceful possession and enjoyment of the house property. The second respondent also filed a suit in O.S.No.988 of 2005 before the same Court praying for ejectment of the appellant from the house property.

6. In countering the interlocutory application filed by the appellant in O.S.No.6703 of 2004, an affidavit allegedly signed by the first respondent was filed by the respondents 2 to 7 and the appellant strongly objected to the same, as the first respondent is incapable of understanding English and incapable of signing such an affidavit. As the defendants 2 to 7 totally prevented the entry of the appellant and his family members into the ground floor of the property where his mother is residing, he preferred a complaint before the Kilpauk Police Station on 23.2.2005 against the respondents 2 to 7 for taking action. As no action was taken, the appellant filed H.C.P.No.259 of 2005 on the file of this court seeking production of the first respondent and the said petition was disposed of on 8.3.2006 directing the police to conduct an enquiry into the complaint given by the appellant and intimate the result to the appellant.

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7. It is the further case of the appellant that his father acquired a number of immovable properties during his life time both in his name as well in the name of the first respondent. In one of the properties standing in the name of his father, the appellant put up a building comprising of 4 flats out of his own income. Similarly, in another property standing in his father's name, the appellant put up a new building comprising of 20 flats at his own cost and he has been collecting the monthly rents from all the tenants in respect of the above said properties till the year 2005. Insofar as the other two properties which are standing in the name of his father, the second respondent is collecting the rent on behalf of the first respondent and it is not known whether the same is being deposited into the first respondent's account. Similarly, in the properties purchased in the name of the first

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respondent, rents are being collected by the second respondent, and it is not known whether they are deposited into the first respondent's account.

8. Due to the disputes, respondents 2 to 7 wrote to the tenants directly after forging the signatures of the first respondent and asked the tenants, who are paying the rent to the appellant, not to pay the same to the appellant. Respondents 2 to 7 are taking undue advantage of the fact that the first respondent is in their custody and using her signature, indulge in all kinds of illegalities and the appellant does not admit any of the letters or notices or affidavits sent or filed on behalf of the first respondent, as the first respondent is incapable of instructing anybody to write letters or send notices on her behalf.

9. It is the further case of the appellant that the first respondent was examined by a qualifying Psychiatrist on 10.8.2005 and she has been declared as a mentally retarded person, incapable of taking decisions on her own. Respondents 2 to 7 have also instituted Rent Control Proceedings in the name of the first respondent and all the property details, title deeds, bank accounts, fixed deposits etc., of the first respondent are all in the custody of the respondents 2 to 7 and they are being misused by the respondents 2 to 7, necessitating the appellant to file the above suit and the interlocutory application for the reliefs as prayed for.

10. The interlocutory application was seriously resisted by the respondents 2 to 5 by filing a common counter affidavit and an additional counter affidavit. It is their case that the first respondent is not a mentally retarded person and she is capable of signing and is capable of understanding things. They deny all the allegations of the appellant and state that a General Power of Attorney dated 30.3.2005 was executed by the first respondent in favour of the third respondent and seventh respondent to look after the properties of the first respondent. It is their case that a suit in C.S.No.197 of 2006 has been filed for partition of the properties left behind by the father of the second respondent and the same is pending on the file of this Court. According to the respondents, the first respondent is an income-tax assessee and she is in good health. Only with an ulterior motive, the appellant has instituted the present proceedings. Hence they pray for dismissal of the appeal.

11. Pending the above proceedings, it appears that the appellant has filed a private complaint before the Additional Chief Metropolitan Magistrate Court, Egmore for examining the first respondent in the police station and also by the doctors in the Kilpauk Mental Hospital, which was referred to the Central Crime Branch, Egmore and a case in FIR No.724 of 2006 under Sections 420, 465, 467, 471 IPC was registered against the respondents 2 and 3. In the meantime, the interlocutory application filed by the appellant was dismissed by the learned single Judge. Hence the respondents 2 and 3 have filed the Contempt Petition No.72 of 2007 seeking to punish the appellant for disobeying the order dated 11.10.2006 passed in O.A.No.147 of 2006 in C.S.No.121 of 2006, which has been tagged along with the appeal. Likewise, as against the registration of the private complaint, the second respondent has filed Crl.O.P.No.28816 of 2006 seeking to quash the registration of the FIR No.724 of 2006, which has also been tagged along with the present appeal.

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12. We have heard Mr.R.Parthasarathy, the learned counsel appearing for the appellant and Mr.T.V.Ramanujam, the learned Senior Counsel appearing for the respondents 2 to 5 and have gone through the materials placed before us.

13. Learned counsel for the appellant has submitted that the learned single Judge ought to have allowed the application filed by the appellant for a direction directing a panel of doctors from the Government Mental Hospital, Kilpauk to examine the first respondent and submit a report to this Court about her mental health, pending disposal of the suit as, under the provisions of Order XXXII Rule 15 of the Civil Procedure Code, the Court is mandated to hold a judicial enquiry as to the mental state of the person who is alleged to be of weak or infirm mind before or during the pendency of the suit to be of unsound mind and shall also apply to persons, who though not so adjudged, are found by the Court on enquiry to be incapable by reason of any mental infirmity of protecting their interest when suing or being sued. The learned counsel also submitted that even otherwise, this Court, in exercise of the inherent powers under Section 151 of the Civil Procedure Code, can make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. The learned counsel further submitted that when the appellant has filed a comprehensive suit in C.S.No.121 of 2006 to declare the first respondent as a mentally retarded person and is incapable of taking care of her personal and proprietary interests, neither the filing of the Original Petition No.755 of 2005 under the Guardians and Wards Act nor the filing of the suit in O.S.No.6703 of 2004 on the file of the City Civil Court will take away the power of this Court either under Order XXXII Rule 15 or under Section 151 of the Civil Procedure Code. In this context, the learned counsel relied upon the following judgments of this Court and Andhra Pradesh High Court in support of his submissions:-

(1) Ramanathan Chettiar v. Somasundaram (AIR 1941 MAD 505).
(2) A.S.Mohammad Ibrahim Ummal alias Shahul Hameed Ummal of unsound mind by next friend M.T.S.Mohammad Thambi v. Shaik Mohammad Marakayar and another (AIR (36) 1949 MAD 292).
(3) Andhra Pradesh High Court decision in Duvvuri Rami Reddi v. Duvvudu Papi Reddi and others (AIR 1963 AP 160).

14. On the other hand, the learned Senior Counsel appearing for the respondents 2 to 5 has submitted that the interlocutory application has been filed with an ulterior motive and in any case, the issue can be decided only at the time of trial. He would further submit that an application for appointment of a panel of doctors cannot be entertained under Order XXXII Rule 15 of the Civil Procedure Code.

15. We have carefully considered the rival contentions made on either side. From the pleadings and the rival contentions, the following point arises for determination:-

> "Whether the application for appointment of a panel of doctors to examine the first defendant, pending the suit, could be entertained under Order XXXII Rule 15 of the Civil Procedure Code?"

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16. Order XXXII Rule 15 of the Civil Procedure Code reads as under:-

> "15. Rules 1 to 14 (except Rule 2A) to apply to persons of unsound mind.--Rules 1 to 14 (except Rule 2A) shall, so far as may be, apply to persons adjudged before or during the pendency of the suit, to be of unsound mind and shall also apply to persons who, though not so adjudged, are found by the Court on enquiry to be incapable, by reason of any mental infirmity, of protecting their interest when suing or being sued."

17. A perusal of the Rule indicates that it applies to two classes of persons namely, persons who are already adjudged to be of unsound mind and the persons who are not so adjudged to be of unsound mind. In this case, the first respondent has not been so far adjudged to be a person of unsound mind or a mentally infirm person and the same is in dispute for adjudication in the suit. Nevertheless, the question is whether the first respondent could be directed to suffer for a medical examination to find out as to her mental infirmity. By virtue of Order XXXII Rule 15 of the Civil Procedure Code, power is vested on this Court to order medical examination of a person even during the pendency of the suit to be of unsound mind. To find out the same, the Court has always the right and duty to exercise such power. A plain reading of Order XXXII Rule 15 shows that the Court need not wait for examining a person as to whether he/she is mentally infirm or not only at the time of examination of witnesses. As the medical evidence is also a mode to establish the claim, such a right could be exercised by the Court even as an interim measure.

18. Prior to the amendment Act 104 of 1976, Order XXXII Rule 15 CPC speaks of only mental infirmity. After the substitution, the Rule refers to a person of "unsound mind". While considering the words "mental infirmity", this Court in the judgment in Re Periaswami Goundan (AIR 1954 Madras 810) has held that the said words enlarge the scope of Order XXXII Rule 15 to apply even to a person of unsound mind. Mental infirmity may also include the persons with normal intellectual capacity. In P.P.Ar.Rm.Sp.Ramanathan Chettiar v. A.R.R.M. Somasundaram Chettiar (AIR 1941 Madras 505), while considering the mental illness, this Court has observed that even in case of a person of weak intelligence, Order XXXII Rule 15 can be invoked holding that he is of unsound mind requiring the appointment of a guardian ad litem. In fact this Court has held that if the mental infirmity is such as to make a disabled person of protecting his/her interest while being sued or while suing, he/she would certainly come within the ambit of the provisions of Order XXXII Rule 15 of the Civil Procedure Code.

19. In the judgment in Lee v. Ryder (1822) 6 Madd.294, Sir John Leach (Vice Chancellor), has held as follows:-

> "This Court doth order, that it be referred to Mr.Cross, one etc., to inquire whether the defendant John Taylor is competent to answer the plaintiff's bill, without the appointment of a guardian for that purpose; and for the purpose of such inquiry it is ordered that the defendant John Taylor do attend the said Master from time to time as he shall direct. And the said Master is to be at liberty to call in such

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medical assistance as he may think necessary in making such inquiry; and the said Master is to state the result of the said inquiry, with his opinion thereon, to the Court, whereupon such further order shall be made as shall be just."

In the judgment in Richmond v. Richmond (1915) 111 L.T. 273, the place of medical evidence in matters like this came up for consideration before Neville, J. and the learned Judge observed as follows:-

"With regard to the question of whether in any, or what degree, she is capable of managing her own affairs, and being bound by her own contracts and by her own acts, that, in my opinion, is always a question for the Court to decide before which the matter comes. I say that, because, although I did not interrupt at the time, both in the affidavits and the parol evidence given here, it is obvious that an idea obtained that that was a question for the doctors to decide, and that the question was whether the doctors thought that she was capable of managing her own affairs or whether they did not. In my opinion that is not so; it is for the Court to decide, although the Court must have the evidence of experts in the medical profession who can indicate the meaning of symptoms and give some general ideas of the mental deterioration which takes place in cases of this kind. I think that is a matter of importance to bear in mind, because, although the witnesses in the present case are the most competent men to be found to give an opinion upon questions of insanity from a medical aspect of the case, I think their evidence here has shown pretty well that they are not the best persons in the world to decide a question which depends upon the weighing of evidence and the materiality of the facts that come before them."

In the judgment in Ayyanadan v. Seeniammal (AIR (7) 1920 Mad.213), Krishnan, J. has held as follows:-

"Order 3, Rule 1, proviso is wide enough to enable the Court to direct any party to the suit to appear in person whether he be a minor or a major or of sound or unsound mind and it may be done at any stage of the suit."

20. While the jurisdiction of this Court under Order XXXII Rule 15 of the Civil Procedure Code to enquire into the dispute as to whether the plaintiff therein was really by reason of unsoundness of mind or mental infirmity incapable of protecting her interest was considered, this Court in the judgment in A.S.Mohammad Ibrahim Ummal alias Shahul Hameed Ummal of unsound mind by next friend M.T.S.Mohammad Thambi v. Shaik Mohammad Marakayar and another, AIR (36) 1949 Madras 292, has held in paragraph 8 as follows:-

"Order 32, R. 15, Civil P.C., applies the procedure contained in Rr.1 to 14 of that Order to persons adjudged to be of unsound mind and to persons who, though not so adjudged, are found by the Court on

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inquiry, by reason of unsoundness of mind or mental infirmity, to be incapable of protecting their interests when suing or being sued. Under this rule, it would be seen that the Court has the right and jurisdiction to enquire into the question, in a case where a person was not already adjudged to be of unsound mind, whether the person was really of unsound mind or not. That this jurisdiction does not rest on any statutory rule but is part of the inherent jurisdiction of the Court is clear from the decision of Lee v. Ryder, (1822) 6 Madd.294: 56 E.R.1103."

While considering a similar question as to whether under Order XXXII Rule 15 of the Civil Procedure Code the Court can enquire into the dispute as to whether a person is of unsound mind or mentally infirm, by placing reliance on the judgments of this Court in Ramanathan Chettiar v. Somasundaram (AIR 1941 Mad 505), Periaswami Goundan In re (AIR 1954 Mad 810) and in Mohammed Ibrahim Ummal v. Sheik Mohamed Marakayar (AIR 1949 Mad 292), a learned Judge of the Andhra Pradesh High Court in the judgment in Duvvuri Rami Reddi v. Duvvudu Papi Reddi and others (AIR 1963 AP 160), has held in paragraph 22 as follows:-

"From these decisions, the following principles emerge:
(1) Order XXXII, R.15 C.P.C. places persons of unsound mind or persons so adjudged in the same position as minors for purposes of Rr.1 to 14.
(2) Order XXXII R.15 C.P.C. applies not only to a person adjudged to be of unsound mind, as under the old Code, but also to a person of weak mind.
(3) Where it is alleged that a party to a suit is of unsound mind and the other party denies it, the Court must hold a Judicial Inquiry, and come to a definite conclusion, as to whether by reason of the unsoundness of mind or mental infirmity, he is incapable of protecting his interests in the suit.
(4) Mental infirmity may even be due to physical defects, if it renders him incapable of receiving any communication, or of communicating his wishes or thoughts to others.
(5) Whether a person is of unsound mind or mentally infirm for the purpose of the rule and the extent of the infirmity has to be found by the Court on inquiry.
(6) Where the question of unsoundness of mind arises not only under O.XXXII, R.15 C.P.C. but is also one of the issues in the suit, the Court has ample jurisdiction to enquire into that question, and for that purpose seek medical opinion.
(7) The enquiry should consist not only of the examination of the witnesses produced by either party, but also of the examination of the alleged lunatic by the judge, either in open court or chambers, and as Courts are generally presided over by lay-men, as a matter of precaution, the evidence of medical expert should be taken.
(8) Of course, the opinion, of a doctor, as is the

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opinion of any other expert, under Sec.45 of the Evidence Act, is only a relevant piece of evidence.
(9) The Court may also compel the attendance of the alleged lunatic before it, and to submit himself for medical examination. If the alleged lunatic is in custody, the Court may direct the next friend or any other person having custody to produce him before the medical expert for examination.
(10) Where the precaution of judicial enquiry is not observed, the person cannot be declared lunatic, and a guardian cannot be appointed for him.
(11) When a person is adjudged a lunatic irregularly and improperly, and notice was not served on him, and a guardian alone was allowed to appear and defend the suit and decree was passed owing to the guardian not putting up a proper defence, the alleged lunatic can treat the decree against him as an ex parte decree, and have it set aside under O.IX R.13 C.P.C."

21. Coming to the facts of this case, the appellant has produced a report from Dr.K.Vaidhyanathan, Senior Anaesthesiologist and Critical Care Consultant dated 4.4.2005 of Billroth Hospitals, Chennai certifying that the first respondent is mentally subnormal. He is only a Anaesthesiologist. Another report by one Dr.S.Premkumar, Senior Orthopaedic Surgeon certifying the first respondent as mentally subnormal is also produced. These two reports cannot be taken as an opinion by the doctors who are experts to certify about the mental infirmity of the first respondent. It appears that Dr.V.Jeganathan, who is also closely related to the parties, has enclosed the above two reports without expressing his opinion. A further certificate dated 10.8.2005 issued by one Dr.Anand Balan, Consultant Psychiatrist certifying the first respondent as mentally retarded is also filed by the appellant.

22. On the contrary, the respondents have filed a certificate obtained from one Dr.T.Santhanam, Psychologist dated 19.7.2006 certifying the first respondent as not a mentally retarded person. Yet another certificate issued by Dr.R.Sathianathen, Consultant Psychiatrist dated 20.7.2006 certifying the first respondent as "low level of intellectual functioning" is also produced. The learned single Judge has rejected the claim of the appellant solely on the ground that the appellant has to establish the claim as to whether the first respondent is mentally retarded or not through documents at the time of trial. However, as there are contrary claims, certificates giving divergent opinion and considering the interest of not only the parties but also to meet the ends of justice, it will be only proper for this Court to issue an interim direction directing a panel of doctors from the Government Mental Hospital, Kilpauk to examine the first respondent and submit a report about the state of her mental health before the Court.

23. In view of the rival claims and the certificates giving divergent opinion on the mental status of the first respondent, answer the issue accordingly and hence we are inclined to allow the appeal. Accordingly, the impugned order is set aside and the appeal is allowed. Consequently, O.A.No.147 of 2006 in C.S.No.141 of 2006 stands allowed and the Dean,

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Government Mental Hospital, Kilpauk is directed to constitute a panel of doctors to examine the first respondent by name G.V.Nagammal, W/o G.M.Venkatesalu Naidu and submit a report about the state of her mental health before the Court within a period of one month from the date of communication of this order. Consequently, M.P.No.1 of 2007 is closed. No costs.

24. In view of the above order, Contempt Petition No.72 of 2007 stands dismissed.

25. In view of the above orders, we direct the Registry to list the Crl.O.P.No.28816 of 2006 before the concerned Judge for adjudication on its own merits.

13.04.2007

Being Mentioned

This Appeal having been posted on Friday the Twenty Seventh day of April 2007 (27.04.2007) for being mentioned in pursuance to the order of this Court dated 13.04.2007 and made in O.S.A.No.5 of 2007 and in the presence of aforesaid Advocates the Court made the following order :

This matter is listed today "For Being Mentioned.

Heard advocates. This is in continuation of our order dated 13.04.2007. It will be open for the panel of Doctors to visit the house of the first respondent to examine her in her house after notice to the family members.

At the request of Mr.T.V.Ramanujam, learned Senior Counsel appearing for the respondent, operation of the order is stayed for a period of 4 weeks.

27.04.2007

ss

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Dean, Government Mental Hospital, Kilpauk, Chennai.
2. The Sub Assistant Registrar (O.S.), High Court, Madras

+ 1 cc to Mr. Satish Parasaran, Advocate, SR No.29706
+ 1 cc to Mr. T. V. Krishnamachari, Advocate, SR No.29556

JRG(CO)
SR/20.4.2007

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